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Office-Supreme Court, U.S.
FILED
JUN 5 1959
JAMES R. BROWNING, Clerk

No. 551

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

JIM DEVRIES, ELECTRICAL WORKERS LOCAL NO. 426, OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, O. E. ROOT, AS PRESIDENT OF SAID LOCAL 426, AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, *Petitioners,*

VS.

BAUMGARTNER'S ELECTRIC CONSTRUCTION CO., *Respondent.*

PETITION FOR REHEARING

MELVIN T. WOODS,
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We hereby certify that this Petition is presented in good faith and not for delay. As will be hereinafter specified it presents a substantial matter not previously presented.

We feel that in reversing this case on the authority of *San Diego Building Trades Council, etc., v. Garmon,* 79 S. Ct. 773, the Supreme Court of the United States has overlooked and misapprehended the nature of the issue in the case at bar in that the jury and the trial court in this case both found that the wrong done the plaintiff was malicious. This was confirmed by the opinion of the South Dakota Supreme Court The complaint alleged that defendants' picketing was for the purpose of injuring and destroying the plaintiff and that the plaintiff was maliciously pursued from job to job to

this end. These allegations were fully sustained by the evidence and accepted by the Court and Jury.

Surely such a wrong, even though not involving violence, is just as offensive, just as reprehensible and just as damaging as if it did involve violence, so that the rule of *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 74 Sup. Ct. 833, 835, 98 Law Add. 1025 should have been applied instead of the rule of the Garmon case.

Respondent therefore respectfully requests that this matter be reconsidered and that a hearing be granted in this Court on the merits.

Respectfully submitted,

MELVIN T. WOODS,
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Attorney for Respondent